

Executive Summary – Enforcement Matter – Case No. 55264
Lake Padre Development Company, LLC
RN109187450
Docket No. 2021-0477-WQ-E

Order Type:

Findings Agreed Order

Findings Order Justification:

Indifference to legal duty based on violation of a previous order.

Media:

WQ

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

Lake Padre Preliminary Dredging Phase 1, located east of Park Road 22 between Whitecap Boulevard and Highway 361, Corpus Christi, Nueces County

Type of Operation:

construction site

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: September 3, 2021

Comments Received: No

Penalty Information

Total Penalty Assessed: \$9,072

Total Paid to General Revenue: \$9,072

Total Due to General Revenue: \$0

Payment Plan: N/A

Compliance History Classifications:

Person/CN - Unsatisfactory

Site/RN - Unsatisfactory

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: April 2014

Investigation Information

Complaint Date(s): N/A

Complaint Information: N/A

Date(s) of Investigation: March 10, 2020

Date(s) of NOE(s): May 19, 2020

**Executive Summary – Enforcement Matter – Case No. 55264
Lake Padre Development Company, LLC
RN109187450
Docket No. 2021-0477-WQ-E**

Violation Information

Failed to obtain authorization to discharge stormwater associated with construction activities [30 TEX. ADMIN. CODE § 281.25(a)(4), TEX. WATER CODE § 26.121, 40 CODE OF FEDERAL REGULATIONS § 122.26(c), and Docket No. 2017-1553-MLM-E, Ordering Provision No. 2.b.ii].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

By January 27, 2021, the Site revegetated to at least 70% vegetation cover to achieve final stabilization.

Technical Requirements:

N/A

Contact Information

TCEQ Attorney: N/A

TCEQ Enforcement Coordinator: Steven Van Landingham, Enforcement Division, Enforcement Team 3, MC 219, (512) 239-5717; Michael Parrish, Enforcement Division, MC 219, (512) 239-2548

Respondent: Tim Lange, Manager, Lake Padre Development Company, LLC, 14650 Compass Street, Suite 1, Corpus Christi, Texas 78418

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

DATES	Assigned	26-May-2020	Screening	4-Jun-2020	EPA Due	
	PCW	18-May-2021				

RESPONDENT/FACILITY INFORMATION	
Respondent	Lake Padre Development Company, LLC
Reg. Ent. Ref. No.	RN109187450
Facility/Site Region	14-Corpus Christi
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	55264	No. of Violations	1
Docket No.	2021-0477-WQ-E	Order Type	Findings
Media Program(s)	Water Quality	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Steven Van Landingham
		EC's Team	Enforcement Team 3
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$5,000
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History	50.0%	Adjustment	Subtotals 2, 3, & 7	\$2,500
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Notes: Enhancement for two orders containing a denial of liability and an Unsatisfactory Performer classification.

Culpability	No	0.0%	Enhancement	Subtotal 4	\$0
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0%	Enhancement*	Subtotal 6	\$0
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Total EB Amounts: \$1,572
 Estimated Cost of Compliance: \$1,500
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$7,500
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OTHER FACTORS AS JUSTICE MAY REQUIRE	21.0%	Adjustment	\$1,572
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommended enhancement to capture the avoided cost of compliance associated with the Violation.

Final Penalty Amount	\$9,072
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$9,072
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DEFERRAL	0.0%	Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage.

Notes: No deferral is recommended for Findings Orders.

PAYABLE PENALTY	\$9,072
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Screening Date 4-Jun-2020

Docket No. 2021-0477-WQ-E

PCW

Respondent Lake Padre Development Company, LLC

Policy Revision 4 (April 2014)

Case ID No. 55264

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN109187450

Media Water Quality

Enf. Coordinator Steven Van Landingham

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Number	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	2	40%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgments or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 40%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Unsatisfactory Performer

Adjustment Percentage (Subtotal 7) 10%

>> Compliance History Summary

Compliance History Notes

Enhancement for two orders containing a denial of liability and an Unsatisfactory Performer classification.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 50%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 50%

Screening Date 4-Jun-2020

Docket No. 2021-0477-WQ-E

PCW

Respondent Lake Padre Development Company, LLC

Policy Revision 4 (April 2014)

Case ID No. 55264

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN109187450

Media Water Quality

Enf. Coordinator Steven Van Landingham

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 281.25(a)(4), Tex. Water Code § 26.121, 40 Code of Federal Regulations § 122.26(c), and Docket No. 2017-1553-MLM-E, Ordering Provision No. 2.b.ii

Violation Description Failed to obtain authorization to discharge stormwater associated with construction activities. Specifically, the Respondent performed construction activities prior to obtaining authorization under Texas Pollutant Discharge Elimination System General Permit No. TXR150000.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0.0%
	Potential				

>> Programmatic Matrix

Matrix Notes	Falsification	Major	Moderate	Minor	Percent
			x		
100% of the rule requirements were not met.					

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 4 Number of violation days 352

daily		Violation Base Penalty \$5,000
weekly		
monthly		
quarterly	x	
semiannual		
annual		
single event		

Four quarterly events are recommended from the June 18, 2019 effective date of Agreed Order Docket No. 2017-1553-MLM-E to the June 4, 2020 screening date.

Good Faith Efforts to Comply

0.0% Reduction \$0

	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	

Notes The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$5,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1,572

Violation Final Penalty Total \$9,072

This violation Final Assessed Penalty (adjusted for limits) \$9,072

Economic Benefit Worksheet

Respondent Lake Padre Development Company, LLC
Case ID No. 55264
Reg. Ent. Reference No. RN109187450
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Costs Saved	EB Amount
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Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

ANNUALIZE avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/Equipment				0.00	\$0	\$0	\$0
Financial Assurance				0.00	\$0	\$0	\$0
ONE-TIME avoided costs	\$1,500	18-Jun-2019	4-Jun-2020	0.96	\$72	\$1,500	\$1,572
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost to revegetate the Site to at least 70% vegetation cover to achieve final stabilization. The Date Required is the effective date of Agreed Order Docket No. 2017-1553-MLM-E and the Final Date is the screening date.

Approx. Cost of Compliance

\$1,500

TOTAL

\$1,572

The TCEQ is committed to accessibility.

To request a more accessible version of this report, please contact the TCEQ Help Desk at (512) 239-4357.



Compliance History Report

Compliance History Report for CN605360858, RN109187450, Rating Year 2020 which includes Compliance History (CH) components from September 1, 2015, through August 31, 2020.

Customer, Respondent, or Owner/Operator: CN605360858, Lake Padre Development Company, LLC **Classification:** UNSATISFACTORY **Rating:** 250.00

Regulated Entity: RN109187450, Lake Padre Preliminary Dredging Phase 1 **Classification:** UNSATISFACTORY **Rating:** 250.00

Complexity Points: 0 **Repeat Violator:** NO

CH Group: 09 - Construction

Location: East of Park Road 22 between Whitecap Boulevard and Highway 361, in Corpus Christi, Nueces County, Texas

TCEQ Region: REGION 14 - CORPUS CHRISTI

ID Number(s):

AIR QUALITY NON PERMITTED ID NUMBER
R14109187450

Compliance History Period: September 01, 2015 to August 31, 2020 **Rating Year:** 2020 **Rating Date:** 09/01/2020

Date Compliance History Report Prepared: March 24, 2021

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: March 24, 2016 to March 24, 2021

TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.

Name: Steven Van Landingham

Phone: (512) 239-5717

Site and Owner/Operator History:

1) Has the site been in existence and/or operation for the full five year compliance period? NO

2) Has there been a (known) change in ownership/operator of the site during the compliance period? NO

Components (Multimedia) for the Site Are Listed in Sections A - J

A. Final Orders, court judgments, and consent decrees:

1 Effective Date: 10/16/2018 ADMINORDER 2017-1597-WQ-E (1660 Order-Agreed Order With Denial)

Classification: Moderate

Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)

Rqmt Prov: Part II Section F PERMIT

Description: Failed to meet the required conditions of TPDES General Permit No. TXR150025376 prior to submitting a Notice of Termination, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4) and TPDES General Permit No. TXR150025376, Part II, Section F.1.

2 Effective Date: 06/18/2019 ADMINORDER 2017-1553-MLM-E (1660 Order-Agreed Order With Denial)

Classification: Major

Citation: 30 TAC Chapter 101, SubChapter A 101.4

30 TAC Chapter 101, SubChapter A 101.5

5C THSC Chapter 382 382.085(a)

5C THSC Chapter 382 382.085(b)

Description: Failed to prevent nuisance dust conditions and to prevent a traffic hazard or interference with normal road use, in violation of TEX. HEALTH & SAFETY CODE § 382.085(a) and (b) and 30 TEX. ADMIN. CODE §§ 101.4 and 101.5.

Classification: Major

Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)

40 CFR Chapter 122, SubChapter D, PT 122, SubPT B 122.26(c)

TWC Chapter 26 26.121

Description: Failed to obtain authorization to discharge stormwater under a Texas Pollutant Discharge Elimination System ("TPDES") General Permit associated with construction activities, in violation of TEX. WATER CODE § 26.121, 30 TEX. ADMIN. CODE § 281.25(a)(4), and 40 C.F.R. § 122.26(c).

Classification: Moderate

Citation: 30 TAC Chapter 101, SubChapter A 101.4

Classification: Moderate

30 TAC Chapter 101, SubChapter A 101.5

5C THSC Chapter 382 382.085(a)

5C THSC Chapter 382 382.085(b)

Description: Failed to prevent nuisance dust conditions and to prevent a traffic hazard or interference with normal road

use, in violation of
TEX. HEALTH & SAFETY CODE § 382.085(a) and (b) and 30 TEX. ADMIN. CODE §§ 101.4 and 101.5.

B. Criminal convictions:

N/A

C. Chronic excessive emissions events:

N/A

D. The approval dates of investigations (CCEDS Inv. Track. No.):

N/A

E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

N/A

F. Environmental audits:

N/A

G. Type of environmental management systems (EMSs):

N/A

H. Voluntary on-site compliance assessment dates:

N/A

I. Participation in a voluntary pollution reduction program:

N/A

J. Early compliance:

N/A

Sites Outside of Texas:

N/A

Component Appendices

Appendix A

All NOVs Issued During Component Period 3/24/2016 and 3/24/2021

N/A

For Informational Purposes Only

Appendix B

All Investigations Conducted During Component Period March 24, 2016 and March 24, 2021

(1421078)

Item 1

July 14, 2017**

For Informational Purposes Only

(1644575)

Item 2

May 19, 2020**

For Informational Purposes Only

* No violations documented during this investigation

**Investigation applicable for the Compliance History Rating period between 09/01/2015 and 08/31/2020.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
LAKE PADRE DEVELOPMENT
COMPANY, LLC
RN109187450**

§
§
§
§
§
§

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2021-0477-WQ-E**

On _____, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Lake Padre Development Company, LLC (the "Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent presented this Order to the Commission.

The Respondent understands that it has certain procedural rights at certain points in the enforcement process, including the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Order, the Respondent agrees to waive all notice and procedural rights.

It is further understood and agreed that this Order represents the complete and fully-integrated agreement of the parties. The provisions of this Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Order unenforceable, the remaining provisions shall be valid and enforceable. The duties and responsibilities imposed by this Order are binding upon the Respondent.

The Commission makes the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

1. The Respondent owns and operates a construction site located east of Park Road 22 between Whitecap Boulevard and Highway 361 in Corpus Christi, Nueces County, Texas (the "Site"). The Site is near or adjacent to water in the state as defined in TEX. WATER CODE § 26.001(5).
2. During an investigation conducted on March 10, 2020, an investigator documented that the Respondent performed construction activities prior to obtaining authorization under Texas Pollutant Discharge Elimination System General Permit No. TXR150000.
3. The Executive Director recognizes that by January 27, 2021, the Site revegetated to at least 70% vegetation cover to achieve final stabilization.

II. CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, the Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 26 and the rules of the TCEQ.
2. As evidenced by Finding of Fact No. 2, the Respondent failed to obtain authorization to discharge stormwater associated with construction activities, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4), TEX. WATER CODE § 26.121, 40 CODE OF FEDERAL REGULATIONS § 122.26(c), and Docket No. 2017-1553-MLM-E, Ordering Provision No. 2.b.ii.
3. Pursuant to TEX. WATER CODE § 7.051, the TCEQ has the authority to assess an administrative penalty against the Respondent for violations of state statutes within the TCEQ's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
4. An administrative penalty in the amount of \$9,072 is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. The Respondent paid the \$9,072 penalty.

III. ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. The Respondent is assessed a penalty as set forth in Conclusion of Law No. 4 for violations of state statutes and rules of the TCEQ. The payment of this penalty and the Respondent's compliance with all the requirements set forth in this Order resolve only the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for violations that are not raised here. Penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Lake Padre Development Company, LLC, Docket No. 2021-0477-WQ-E" to:

Financial Administration Division, Revenue Operations Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. All relief not expressly granted in this Order is denied.
3. The duties and provisions imposed by this Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Site operations referenced in this Order.

4. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
5. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms in this Order.
6. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
7. This Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
8. This Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms: electronic transmission, owner, person, writing, and written, shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
9. The effective date of this Order is the date it is signed by the Commission. A copy of this fully executed Order shall be provided to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Date



For the Executive Director

2/11/2022

Date

I, the undersigned, have read and understand the attached Order. I am authorized to agree to the attached Order, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this Order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.



Signature

5-24-21

Date

Tim Lange

Name (Printed or typed)
Authorized Representative of
Lake Padre Development Company, LLC

MANAGING PARTNERS

Title

If mailing address has changed, please check this box and provide the new address below: